IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 721 of 2000()

CC.4/1996 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER:

ESOW K.UMMEN,
KANDALIL HOUSE,
IRINGOL P.O.,
PERUMBAVOOR.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS:

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1. M.C.CHACKO,
MANKUZHIKARI GLASS HOUSE,
MEENAGADI P.O., WAYANADU DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI
SRI.V.N.SWAMINATHAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3981/2000 IN CRL.R.P. NO.721/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

16/08/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.721 of 2000

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Dated this the 16th day of August, 2007

O R D E R

The revision petitioner is the complainant in C.C.No.4/1996 with respect to the offence under Section 138 of the Negotiable Instruments Act, in which the accused was convicted and sentenced only to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month.

2. The case of the complainant is that a sum of Rs.95,000/- was borrowed by the accused and towards the discharge of the same, the impugned cheque was issued, which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid.

3. The evidence adduced consisted of the testimony of PWs.1 to 3, the complainant and two bank managers and Exts.P1 to P9, which consisted of the dishonour memo as well as

the extract of the account of the accused. The defence examined DW.1.

4. I find that the court below has found that the execution of the cheque has been established from the evidence of PW.1 and dishonour of the same for want of funds in the account of the accused from the testimony of the bank manager and the documents produced. It is contended that Ext.P9 is not a certified extract of the account of the accused and hence cannot be relied on. But I find that the evidence of PW.3 the bank manager and Ext.P2 dishonour memo is sufficient to establish the fact that the cheque was returned for want of funds in the account of the accused. The conviction is only to be confirmed.

In the circumstances and so far as the sentence is concerned the same is definitely not sufficient to satisfy the grievance of the complainant. Hence, the sentence is modified to imprisonment till the rising of the court and to pay Rs.95,000/- to the complainant and in default to undergo simple imprisonment for three months. The accused is granted six months time to pay the compensation

amount. He shall appear before the Judicial Magistrate of the First Class, Perumbavoor, on 16/02/2008 to receive the sentence.

The criminal revision petition is disposed of as above.

SD/-

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.721 of 2000

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O R D E R

16th August, 2007